

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	H. H. Hagar)	
	Map 098-00-0, Parcel 2.00)	Davidson County
	Residential Property)	
	Tax Year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$39,500	\$208,000	\$248,300	\$62,075

An appeal has been filed on behalf of the property owners with the State Board of Equalization. The appeal was timely filed on September 15, 2005.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on April 20, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Judge Hagar, the appellant, and Davidson County Property Assessor's representative, Jason Poling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 4021 Timberview Lane in Hermitage, Tennessee.

The taxpayer contends that the property is worth \$195,000 based on the location of the property and the close proximity of the interstate. Judge Hagar contends his house is 34 years old, has no sewer system or other amenities to homes in this area. Judge Hagar contends that no fewer than ten eighteen wheelers pass his home per hour. The home is 80 feet from interstate I-40 and does not have noise barriers. This issue greatly reduces the value of his home.

Judge Hagar further stated in comparison to other homes in the area, his home has increased over 50.5% of the 2001 values.

The assessor contends that the property should be valued at \$248,300.

The presentation by the taxpayer shows that a lot of time and effort was put into preparing for this hearing. The taxpayers exhibits (collective exhibit #1 & 2) shows that thoughtful planning and research were used in the compilation; however, the germane issue is the value of the property as of January 1, 2005.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . . ."

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$238,770 based upon the exhibits and testimony of the taxpayer. The presumption of correctness that attaches to the decision from the county board is just that, a rebuttable presumption that can be overcome by the taxpayers' presentation.¹ To hold that it is a conclusive presumption would essentially eliminate the right of a taxpayer to present evidence, that scenario is not contemplated by the Assessment Appeals Commission. In this case the administrative judge is of the opinion that the taxpayer has presented clear and convincing evidence as to valuation of the subject property.

Mr. Poling contends that the county has already addressed the noise issue by giving a 20% reduction in the land value. However, based on the testimony and exhibits, the administrative judge believes that a 30% reduction is more in line with the proof.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). In this case, the taxpayer has sustained that burden.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$30,770	\$208,000	\$238,770	\$59,693

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."**

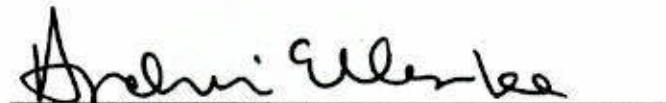
¹ While there is no case law directly on point, several cases and Attorney General Opinions appear to stand for the proposition that: "If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding. . . . *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993) also '[a] court is not required to assume the existence of any fact that cannot be reasonably conceived.'" *Peay v. Nolan*, 157 Tenn. 222, 235 (1928), 1986 Tenn. AG LEXIS 64, 86-142, August 12, 1986. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits or privilege. *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of May, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: H. H. Hagar
Jo Ann North, Assessor of Property